



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD
SEPTEMBER 29, 2005

The regular meeting was called to order by President Carey at 8:30 a.m. Thursday, September 29, 2005. Roll call was taken with all members of the Board being present. Board members and staff present were:

Carole Carey, President
Betty Lou Kasten, Vice President
Robert Griffith, Member
Jay Klawon, Member
Troy McGee, Member
John Paull, Member
Terry Smith, Member
Kelly Jenkins, Counsel
Melanie Symons, Counsel
Mike O'Connor, Executive Director
Linda Owen, Secretary

OPEN MEETING

Stephen C. Kologi, AMRPE; Jim Kembel, MPPA/TIAA-CREF; Kathy McGowan, MSPOA; Mark Johnson, Milliman Inc.; Tom Schneider, MPEA; Terry Teichrow, PERS Member; Carroll South and Geri Burton, Board of Investments; Dave Bohyer, Legislative Services Division; Don Kinman, AFSCME; Dave Senn, Teachers' Retirement System; Kurt Bushnell, Dan Cotrell, Matt Norby, Jack Trethewey, and Douglas H. Neil, members of the Montana State Firemen's Association; and Ian Steel, Disability Claims Examiner; Kim Flatow, Member Services Bureau Chief; Roxanne Minnehan, Fiscal Services Bureau Chief; Carolyn Miller, Administrative Officer; and Joel Thompson, Training and Development Specialist; MPERA, joined the meeting.

MINUTES OF OPEN MEETING

The Executive Director presented the minutes of the open meeting of August 25, 2005. Mr. Griffith moved that the minutes of the previous open meeting be approved as amended. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

EXECUTIVE DIRECTOR'S REPORT - Mike O'Connor

Actuarial Valuations – Mark Johnson, Consulting Actuary with Milliman, reported to the Board on the 2005 Actuarial Valuations. All calculations have been completed and reviewed, and the final reports will be available the beginning of October. Mr. Johnson talked briefly about some census information, and then went through the actuarial aspects of the Public Employees' Retirement System (PERS). He also touched upon the normal cost rate, actuarial liabilities compared to the assets, gains and losses, where we are today versus where we expected to be today based upon what we knew a year ago, and funding sufficiency. He stated upfront that he did not see anything in any of the systems that were unexpected, and no assumptions or methods were changed. He noted that 90% of new hires are staying in the Defined Benefit Plan (DB), 8% are going to the Defined Contribution Plan (DC), and 2% to the Optional Retirement Plan (ORP).

Mr. Johnson stated that the normal cost rate represents the average cost in a year for a member in the system, and is almost identical to what it was one year ago. It went up four basis points from 12.08% to 12.12% of payroll. That is the rate of pay necessary to finance a person's benefit over their working lifetime. The difference between the present value projected benefits and the future normal cost payment is called the actuarial liability.

Is 2.37% the appropriate rate for the plan choice? It is in statute and the Board would have to make a recommendation to the legislature to change it. The portion of the unfunded liability that is associated with the DC plan members was calculated as of June 2004, rolling it forward, and that plan choice rate actuarial unfunded liability (PCR-UAL) was \$13,477,000. Rolling it forward another year adds interest at 8%. There were also payments made to the DB plan to amortize the PCR-UAL. The 2.37% that came in between 2004 and 2005, with interest, was \$1,221,000. There is also recognition of a big investment loss---25% of the loss from 2001-02 and 25% of the loss from 2002-03. That added just over \$5,000,000, so now the remaining unfunded actuarial liability (UAL) is up to \$18,354,000.

Mr. Johnson reiterated that he calculated the normal cost rate for the DB plan membership at 12.12%. Then he put everyone who was in the DC plan into the calculation. What would the normal cost rate be if none of those people could have transferred out of the DB plan? He came up with 12.11%, which was not much of a difference because there were not very many of them. When the plan was originally designed, the expectation was that this difference would be much greater. The DC plan members have to make up that one basis point on the payroll of all the DB members, so it will be a bigger burden for them. They are not paying one basis point on their salaries. The calculation is: what do we have to charge the DC plan members to pay one basis point on the DB members' salaries? The ratio is 17-1. The DC plan members have to be charged 17 basis points to make up this one basis point on the DB plan.

The current amortization rate is 2.37%. The charge for the normal cost difference of 17 basis points must be subtracted. So, there is 2.20% available in the current plan choice rate to pay off \$18 million. How long will that take? Based upon the DC plan payroll, it will take 24.4 years. The statute gave parameters on how long we can take to pay this off, and right now it is 19.75 years. It goes down to 18.75 years in 2006. That means that even though the 2.37% plan choice rate could pay for all of the obligations, it cannot pay for it in 19.75 years; it would take 24.4 years.

How much does the plan choice rate need to be increased? The maximum amortization now is 19.75 years. The statute says you calculate the percentage of payroll needed to amortize the PCR-UAL over that period, and round to the nearest 10 basis points. That equals 2.50%. Add in the 17 basis points for the normal cost rate charge and the amount needed now equals 2.67% of DC payroll. Effectively, if the Board went to the legislature today, they would say 2.37% is not enough; 2.67% is needed going forward. What Mr. Johnson wanted to alert the Board to was that there is one more year of investment loss that is still not recognized and again, the amortization period goes down, so he projected where this rate would be one year from now and came up with 2.77%. For the short term, 2.77% of DC payroll instead of 2.37% would be an appropriate number for the plan choice rate.

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All systems are actuarially sound with the current revenue projections, except PERS with a shortfall of 1.58% of payroll; GWPORS with a shortfall of 0.26% of payroll; and SRS with a shortfall of 2.69% of payroll. Changes in funding will be needed. What deposit is needed on January 1, 2006 to bring the amortization period for PERS to 30 years? The maximum UAL that can be financed over 30 years was 1.64% of payroll. That, from January 1, 2006, is roughly \$266 million. That is calculated as of July 1, 2005. If the legislature put a one-time deposit of \$266 million into PERS on January 1, 2006, the current 13.80% statutory rate will pay the normal cost, the education fund, and amortize the unfunded liability over 30 years. \$1.2 million in GWPORS and \$15.1 million in SRS would be needed for current contraction rates to amortize the UAL over 30 years.

Mr. Smith asked the actuary what the amortization period would be with the final loss included, and what one-time amount would be necessary to reduce the unfunded liability allocated to the DCRP to keep the amortization at 2.37%. If the PCR did not change, where would we be in 2006? Mr. Johnson said he would be looking at that. Mr. Smith requested that the actuary include the DCRP in the material to be presented to the Governor's Office regarding the one-time funding.

In conclusion, Mr. Johnson reiterated there are five systems that are actuarially sound with the current revenue projections, three that are not (PERS, GWPORS, and SRS). He expects to be looking at changes in funding for those systems if the legislature meets and decides to take some action. If the contribution rate needed to bring the amortization period to 30 years was done January 1, 2006, the 30-year rate would be 15.42% instead of 15.38%, and the shortfall of 1.58% goes to 1.64% in six months.

President Carey thanked Mr. Johnson for his very informative report.

Future Board Meetings – Friday, December 9, 2005. Mrs. Kasten moved to approve the future Board meeting date of December 9, 2005. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Out of State Travel Authorization – The Board was requested to authorize Kelly Jenkins to attend the National Association of Public Pension Attorneys' Executive Board Meeting in Dallas, TX, December 1-2, 2005. Mr. Klawon made a motion to approve the NAPP travel authorization for Mr. Jenkins. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

State Administration and Veterans' Affairs Interim Committee (SAVA) Meeting – President Carey gave a brief summary of the SAVA meeting that she, Mr. Klawon and Mr. O'Connor attended on September 9, 2005. President Carey explained how the Board and staff work together and Mr. O'Connor explained the technical aspects. Mr. Klawon gave a presentation from his perspective of having a dual role of being on both the BOI and the MPER Board. They also stressed how the Board would like to see the CPERS committee reinstated.

Mr. O'Connor noted that the meeting provided a general summary of how the Teachers' Retirement Board and this Board operate, with a general understanding of how public retirement plans are funded, and how the Board of Investments (BOI) interacts with the two boards. He emphasized having a more formal process to review legislation, giving an opportunity for the legislature to look at it, and giving an opportunity for the public to comment on legislation. He noted that staff is working on developing a more meaningful fiscal note that people can understand what retirement legislation is doing, highlighting the issues dealing with retirement and how it affects funding.

Education Committee Update – Mr. Klawon briefly reported that the committee needs the Board to make a decision on what is “advice” and what is “guidance” as far as education of retirement investments. Some research has been done of what other states are doing versus what our Board has been doing. This needs to be resolved because it will be part of the next RFP when the Great-West Retirement Services contract is up for renewal. Mr. O'Connor noted that the timeline for the RFP is approximately early next spring.

Board of Investments Update – Mr. Paull reported that with Jim Penner retiring in July 2004, Bob Bugni took over as the interim Chief Investment Officer. Through an RFP process, the BOI selected Gary Houtepolt and Associates as the search firm to find a new CIO. After having an interview before the full board on September 1, 2005 and being unanimously selected, Clifford Sheets accepted the position. He will be starting as the CIO on October 3, 2005, with 28 years of investment experience.

Operational Summary Report - The Executive Director presented an operational summary report for the month of August 2005, answering any questions Board members had.

The following portion of the meeting relates to matters of individual privacy. President Carey determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

CLOSED MEETING

MINUTES OF CLOSED MEETING

The Executive Director presented the minutes of the closed meeting of August 25, 2005. Mr. Griffith moved that the minutes of the previous closed meeting be approved. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

RETIREMENT REPORT - Ian Steel, Disability Claims Examiner

Disability Claims - The Disability Claims Examiner presented the disability claims for Board consideration. After discussion, Mr. Paull made a motion for approval of the disability claims as recommended for Renee Olmstead and Robert Lanman, without annual review, a duty-related disability for Paul Jacobs, without annual review; denying the claims for Susan Sedminik, Carl Fiscus and Kevin Hadley; and deferring action on Robert Vanden Heuvel for additional medical information. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Disability Reviews - The Disability Claims Examiner presented the disability reviews to the Board. After discussion of all the reviews, Mr. Paull made a motion to approve the disability reviews as recommended: to continue disability retirement and continue annual review for James Wiseman; to continue disability retirement and discontinue annual review for Wendy McComas. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Finalized Service/Disability Retirement Benefits, Monthly Survivorship/Death Benefits, and Funeral Benefits - Applications for service retirements/finalized disability benefits, applications for monthly survivorship-death benefits, and applications for funeral benefits were presented to the Board. Mr. Griffith made a motion to approve the retirement benefits as presented. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Contested Case Report Update - The Board Attorneys presented a contested matter status report update.

CONTESTED CASES

Ms. Symons advised the Board that Mr. John Barrows, Editor-Publisher for the Dillon Tribune, will be present at W.G. Gilbert, III's contested case reconsideration and has requested the meeting be open. Mayor Martin Malesich, city of Dillon, was also in attendance. Ms. Symons pointed out that Mr. Gilbert's case has previously been treated in a closed meeting fashion, but she saw no reason why the meeting could not be open. Under the Board's policy, it is not a private issue. Mr. Gilbert's case involves the issue of whether he is an employee covered by PERS. He is a public employee paid with public money.

Mr. Barrows, Editor-Publisher for the Dillon Tribune, respectfully requested that the meeting be open on the basis that "the public's right to know" overrides the individual's right to privacy. There has been a great deal of public interest because Mr. Gilbert works for the city of Dillon as a public official. Ms. Jacqueline Lenmark, attorney with the Keller law firm in Helena, representing Mr. Gilbert today, stated they have no objection to an open meeting and that it is, in fact, appropriate for this particular matter. President Carey declared the meeting open.

The closed meeting was recessed and the open meeting was reconvened.

Informal Reconsideration – G.W. "Duke" Gilbert, III – Ms. Symons summarized that the issue is whether or not Mr. Gilbert is an employee of the city of Dillon as the City Attorney, or if he is an independent contractor. Mr. Gilbert wants to be covered by PERS at this point in time, and to be covered he must be an employee, not an independent contractor.

Ms. Lenmark, representing Mr. Gilbert, began her presentation addressing the statute that governs the Public Employee Retirement System (PERS). 19-2-403(4), MCA, states: "The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive

benefits under the retirement systems.” Mr. Gilbert acknowledges the Board’s authority on that. She added that 19-2-303(20), MCA, states: “Employee” means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an inter-local governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.” Ms. Lenmark felt Mr. Gilbert meets that particular definition of employee.

The Board, however, has rule-making authority in addition to the statutory requirements that govern it. The Board has further defined, through its rule-making authority, what constitutes employee status. In ARM 2.43.302(6), employment and reemployment are defined as: “the performance of services for an employer by a person other than an independent contractor.” Ms. Lenmark pointed out that subsection 6 goes on to say: “If any of the four factors listed in subsection 10 indicate control or direction by the employer, an employment relationship exists.”

Ms. Lenmark also addressed subsection 10 because she felt it was not just the four factors of control or direction that are important. The language says an independent contractor means “an individual who renders service in the course of an occupation **and...**” Mr. Gilbert renders service to the city of Dillon as a lawyer. “...And he must be engaged in an independent trade, occupation, profession, or business.” Mr. Gilbert is engaged independently with his own, private law practice. “He also must be **under contract and in fact**, at all times free from control or direction over the performance of his services.” There is a factual dispute about whether Mr. Gilbert’s performance is, in fact, free from control. Ms. Lenmark noted that is where most of the argument has been. Another requirement says “under contract” and Mr. Gilbert has no contract that identifies him as an independent contractor. There are letters from both the Mayor and City Council indicating the nature of the contract and their intent is that he be an employee. Ms. Lenmark stated it is their position that it is not Mr. Gilbert’s burden of proof to demonstrate that he is not an independent contractor. Ms. Lenmark addressed the four factors the administrative rule cites as indicative of control. She felt that a careful analysis of the Board’s rule demonstrates that at least one factor, if not all four factors of control, is satisfied and employment has been established.

Ms. Lenmark pointed out that Mr. Gilbert has been budgeted by the city of Dillon as an employee since January 1, 2002. Not only was his salary established there, but also the necessary payroll withholding on that employment. The city has been paying Mr. Gilbert as an employee and the payroll shows his tax and insurance withholdings, as well as PERS contributions, have consistently been withheld from his salary and paid to the appropriate agencies. His compensation has been reported to the state and the IRS on W-2’s. That is different than the way the preceding city attorney’s compensation was being reported on a 1099 form, consistent with an independent contractor status.

Mr. Jenkins swore in Mr. Gilbert so he could testify on his own behalf.

Mr. Griffith asked if Mr. Gilbert was the only city of Dillon employee who has a contract. Mr. Gilbert explained that the city of Dillon has two collective bargaining agreements with the employees; police are covered under the police agreement and other employees are all covered under another agreement. There are references in Mr. Gilbert’s contract that he will be reimbursed for mileage according to the schedule set out in the employees’ negotiated contract.

Ms. Lenmark stated a contract is necessary to establish the independent contractor status. The absence of a contract that says Mr. Gilbert is an independent contractor is very important because the Board's rule requires a contract that says that. Mr. Gilbert began working for the city of Dillon on January 1, 2002. A written contract was signed November 29, 2004. The contract memorialized the agreement that the city and Mr. Gilbert reached over the terms of his employment. Mr. Gilbert stated he turns in a work schedule recap of his hours to the city council every month. Those hours may vary. The proof of payment is the payroll sheets that show the deductions made. Mr. Gilbert has responsibilities to the city council, but the Mayor is his supervisor and the agreement was, essentially, made with him. Mr. Gilbert stated he is not a full-time employee and there are differences because of that.

Ms. Symons stated she agreed with most everything Ms. Lenmark said regarding the authority of this Board to make these determinations, in 19-2-403(4), MCA. ARM 2.43.302(6) is the "standard test" for employee versus independent contractor, and she agrees that, generally under that standard test, if any one of the four factors exists, then there is an employment relationship. Ms. Symons does disagree that Mr. Gilbert would be an employee under the definition of employee in 19-2-303(20), MCA, because the statute requires that the employee be someone an employer must pay contributions for, and an employer only pays PERS contributions for someone who is an employee. It is a circular argument.

This issue is important to the Board because of their fiduciary duty to make sure that PERS contributions are paid appropriately for the benefit of the members. If Mr. Gilbert is not an employee in this position, then he should not have his retirement benefit based on the salary he makes in this position. There is no argument that he may have previously been a member of the system and when he retires, there is no question that he will receive a benefit. What the Board needs to determine is what the benefit will be, and that is based on highest average compensation.

There are, essentially, two factors to determine if Mr. Gilbert is an independent contractor. The first factor is that he must have his own business. That does not mean an employee cannot have his/her own business, but an independent contractor has to have his/her own business. Mr. Gilbert does have his own business as an attorney. The second factor is whether or not the city of Dillon controls the work Mr. Gilbert does. Ms. Symons is not disputing that the burden of proof of independent contractor is on the entity.

The four factors that have to exist if someone is an independent contractor are:

1. Right to control - Most important is whether or not the employer has the right to control the actions taken by the employee. If his duties are set out, that is different than telling him how to perform those duties. The Mayor tells Mr. Gilbert what his duties are and how the city wants issues handle, but he does not tell Mr. Gilbert how to do it day-to-day. This is similar to telling a divorce attorney that you want custody, support and certain property without telling how to draft the document or how to argue the case.

2. Equipment and supplies – In a newspaper article, when Mr. Gilbert was asked to defend why he was paid so much money for so few hours, one of the things he stated was that he had to pay to supply his office, and pay his office staff for doing work for him, etc. These are indications of an independent contractor. If he were truly an employee of the city, he would not have to do those things.
3. Pay – Mr. Gilbert's contract indicate he is on a retainer to be the city attorney to work 55 hours a month for "X" amount of money. Past records show he received \$4,000 regardless of number of hours he worked. In addition, if he had extra projects, then he was paid an extra amount of money. He was paid based on the work performed, not based on the hours.
4. Right to fire – Ms. Symons felt the contract was very clear that Mr. Gilbert was going to be the city attorney unless he violated statute. As was previously pointed out by Mr. Jenkins, that contract did not come into existence until November 2004. Throughout the evidence that was presented to the Board, there was ongoing discussions regarding what the proper contract was. The contract has evolved over time as issues have been raised by MPERA. Ms. Symons submits there is not enough evidence to say whether, under the previous oral contract, Mr. Gilbert would be an independent contract.

When questioned by Mr. Klawon, Mr. Gilbert stated that the city's portion of the PERS contribution does come out of his pay.

When Mr. McGee referred to something said in a newspaper article, Ms. Lenmark registered on the record a formal objection to the newspaper article being relied upon as evidence in this matter. She believes it is hearsay and should not be relied upon at all by this Board. Ms. Symons responded to the objection that she had stated at the beginning that she recognized the article could not be used to prove that what it said in it is true. She submitted it to show that different facts are appearing in different circumstances. Mr. Gilbert said he was willing to answer any questions.

Mr. Gilbert stated that his paycheck is like any other state employee's paycheck where the deductions are taken out. The problem they ran into was what to do about the extra work he performs. When he receives his money from the city for the extra work, which is all included in the same check, the city pays employer contributions in addition to the dollar amount that is paid for extra work, and have since the beginning. When Mr. Jenkins asked Mr. Gilbert if the employer pays an extra amount above the contractually agreed dollar figure into PERS as employer contributions based on his contracted amount, Mr. Gilbert said yes, it is paid on his salary plus all his extra hours and they have since the beginning.

Mr. Gilbert explained that when the Mayor offered him his job, Mr. Gilbert told him he wanted to be an "employee." The Mayor told him he wanted an "employee" because he wanted to be able to instruct him on how he wanted things done, within the Code of Ethics, of course. That would cost

the city more money because of things like employer PERS contributions, social security, etc., being paid on top of the salary. Therefore, it was agreed that Mr. Gilbert would reduce the base amount his predecessor was paid and that deduction would amount to the city's part of the additional costs. So, it is not costing the city any more, in total dollars, for Mr. Gilbert to be an employee, including the contribution amount the city has to make. He is taking a lesser salary so that it costs the city the same amount of money as for his predecessor, but Mr. Gilbert is an employee and contributions are being paid on the basis of the salary he is earning.

Mr. Gilbert felt he was misrepresented in the newspaper. When Mr. Jenkins asked Mr. Gilbert in what respect he was misrepresented, Ms. Lenmark politely interrupted before her client could respond, to say she continues with her earlier objection and also to have on record the fact that they did not have a complete print of the newspaper article Mr. Jenkins was addressing. President Carey moved on to a motion on the floor.

Mr. Griffith moved to uphold the staff position that Duke Gilbert is a contract employee and therefore, not eligible for membership in PERS for year 2002 forward. Mr. McGee felt this was a confusing case, but that the records indicate Mr. Gilbert is an employee of the city of Dillon. The situation does not seem simple and clear, but that he has been an employee since 2002. Mrs. Kasten agrees with the motion except that, at the time the contract was approved by the Board forward, she felt Mr. Gilbert was an employee, but not during the time until Mr. Gilbert's position was formalized. Mr. Klawon felt there was a creative manipulation to have an independent contractor posed as an employee for the sole purpose of increased retirement benefits. Just because a city council decides to declare someone as an employee does not make it so. Mr. Klawon seconded the motion, which upon being submitted to vote, was duly carried with Mr. Griffith, Mr. Paull, Mrs. Kasten and Mr. Klawon voting aye, and Mr. Smith, Mr. McGee and President Carey voting nay.

The meeting was again closed to continue with the retirement report.

Informal Reconsideration – Richard Clements – Mr. Clements applied for a disability retirement and came before the Board on July 28, 2005. At the time, the Board denied his claim for additional medical information. Mr. Clements appealed the denial and provided additional records. Mr. McGee made a motion to approve a disability retirement with annual review for Richard Clements. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Informal Reconsideration – Bobbie Wiench – Mr. Wiench is appealing the staff decision to allow only one year of one-for-five service at the increased cost. Mr. Wiench requested the Board grant him two years of one-for-five service at the previously quoted cost. Following discussion, Mr. Klawon moved to uphold the staff determination to enforce a correction. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Informal Reconsideration – Connie O'Connor – Ms. O'Connor purchased two years of one-for-five service a number of years ago, and she asked for a cost statement to buy two additional years. When her cost was calculated, an error was found and Ms. O'Connor was notified of the difference. Ms. O'Connor appealed the staff decision to correct the cost and requested that the Board accept the amounts reflected on the cost statement.

Mrs. Kasten pointed out that statute dictates the Board must correct mistakes. Mrs. Kasten made a motion to uphold the staff determination to correct the error. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye and Mr. Paul voting nay.

Informal Reconsideration – Bonnie Manicke – Ms. Manicke requested credit for three full years of one-for-five service purchased in 1995. At that point in time, Ms. Manicke was working part-time and she is now a full-time employee. However, she does not wish to make an additional payment to receive this service credit as required in A.R.M. 2.43.433.

Mr. Klawon moved that the Board uphold the staff determination that Bonnie Manicke must make the required out-of-pocket payment to receive three years of One-for-Five service, or she can accept proportional service credit. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Mr. Griffith departed the meeting.

Informal Reconsideration – Lloyd Metcalf – Mr. Metcalf originally applied for a disability retirement on January 16, 2004. His original application for a disability retirement was denied at the March 25, 2004 Board meeting. He came before the Board in a contested case hearing on April 22, 2004, when his claim was approved with annual reviews. Mr. Metcalf's case was scheduled for review at the July 28, 2005 Board meeting, at which time the Board moved to cancel Mr. Metcalf's disability retirement. He has appealed that determination and appeared before the Board to discuss his medical condition.

After discussion of the case, Mr. Klawon made a motion to reinstate a disability retirement with annual review for Lloyd Metcalf. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye and Mrs. Kasten voting nay.

The closed meeting was recessed and the open meeting was reconvened.

Tri-Party Board Communications and other activities – David Ewer, Director of the Office of Budget and Program Planning (OBPP), addressed the Board. Mr. Ewer spoke to the Board about a letter from Governor Schweitzer; a letter important because it documents how seriously the administration takes the retirement funding issue and cooperation between the administering boards. He stressed that retirement funding and administration are one of the highest concerns of Governor Schweitzer's administration.

Mr. Ewer noted that Governor Schweitzer is the first Governor, that he knows of, who actually brought together the Public Pension Administration (MPERA), the Teachers' Retirement System Board (TRS) and the Board of Investments (BOI) and tried to have a more cohesive approach. The administration understands there is an asset side that the BOI deals with and there is a liability side that the retirement boards deal with. And, as the letter notes, the administration feels a need to better connect those aspects of pension management, which they have tried to do in a respectful and collegial manner.

The administration is committed to not signing benefit bills unless they are funded. The administration will not encourage, support or sign legislation on "early out" bills unless they are funded. The administration is also suggesting that the legislature consider again the process that was abolished some years ago by which the legislature had a standing interim committee on retirement to review retirement legislation.

Mr. Ewer has gone before the Appropriations Committee to try to explain that we need to have funding for the benefits we now have. Collectively, the gap between what we owe today and the amount (contributions and earnings) available to pay benefits is \$1.3 billion.

The OBPP has a very active interest in what is going on with the MPERA, as well as TRS and BOI. They are respectful and understand that the PER Board acts in a quasi-judicial capacity, and has that right. They would like to suggest that the PER Board have an interest in having strong communications with OBPP and the Governor. Mr. Ewer pointed out that the BOI actively worked with them to get the BOI Chief Investment Officer hired. Mr. Ewer said he did not sit on the interview committee, but when they narrowed it down after doing a national search and they had three finalists, he was scheduled to speak to all three. Mr. Ewer felt he needed to not only sell the position, but to also explain the Budget Office and the Governor's commitment to this person.

Mr. Ewer felt there was insufficient communication between this Board and the BOI. He wants everyone to "get on the same page" and is respectfully asking how that can be accomplished. Mr. Klawon did not see how another layer of bureaucracy would help. Mr. Ewer stated a tri-party board would not be a separate board, it would be made up of the three boards (MPERB, TRS and BOI). The mission would be a single mission, the retirement benefit. Currently, that mission is split; MPERB and TRS manage the liability/benefit side and the BOI manages the asset side.

The vision of the Tri-Party Board, which would be the culmination of the meeting of the executive directors of each of the boards, and the chairman or assistant chair of each of those boards, so we can see, collectively, what is going on. It would take more work for boards, but, for example, the boards could work together to stop bad legislation. A Joint Issues Committee could have two members from each board, who would work together and “compare notes” so there would be some cohesiveness.

Mrs. Kasten noted that the MPER Board has always had a good working relationship with Mr. Penner when he was with the BOI. She felt our Board was aware that communication is good and that we have had it in the past, including quarterly reports from Mr. Penner on investment returns and outlook. Mr. Ewer does not feel the BOI has had sufficient education on the benefit side. When the Board consulting actuary gives a report, it would be beneficial to have everyone hear the same information.

Mr. O'Connor pointed out that at least the boards were aware of potential legislation when the retirement bills went through the interim committee first. Mr. Ewer stated the Budget Office cannot compel the legislature to reinstate a stand-alone committee, but what OBPP can do is decide what the fiscal note says. Everybody has a stake in getting this fixed, both fiscally and institutionally. He is hoping that the Board understands the spirit in which the letter is offered, and that the Board agrees with the direction of the letter and that some of the Board members will be part of a joint issues committee, so everyone would have some sense of what each board is doing.

He hopes the Board will have an interest in having a strong relationship with the Governor's Office and the Budget Office so they could work hard with the new MPERA Executive Director. Mr. Ewer feels it would be very beneficial to have an advocate in the Budget Office, and what he was asking the Board today was that they consider a strong working relationship with the OBPP on the selection process of the new Executive Director.

Mr. Ewer noted that this Governor, for the first time, has pulled people together and tried to show the legislature they need to take some accountability, too. There is a long history of independence of the boards and he was not trying to say they are not independent. They are—they are quasi-judicial. He feels we can have both---doing their mission and expanding it some so there is a more cohesive effort. Governor Schweitzer has an active interest this issue and if there is a special session, retirement comes first. Mr. Ewer said he has no specific plan of action on one-time money or an action plan for PERS. He does know funding must be addressed in a timely manner.

Mr. McGee stated his appreciation of Mr. Ewer for expressing his concerns to the Board, and indicating his obligation to try to have a closer working relationship with this Board. Mr. McGee felt the Board should take full advantage of the effort OBPP is making. President Carey thanked Mr. Ewer for his open discussion with the Board, and invited him and Governor Schweitzer to return any time.

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Personnel – Staffing – Mr. McGee explained that advertising for the Executive Director position has been extended and will close October 6, 2005. It has been decided that the entire Board will be involved in the interview process of the finalists.

ADJOURNMENT

There being no further business to come before the Board at this date, Mr. Klawon made a motion to adjourn the meeting. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye. The next meeting is tentatively scheduled for October 27, 2005, at 8:30 a.m. in Helena.